



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 03 2010

REPLY TO THE ATTENTION OF:
S-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EPA Region 5 Records Ctr.



357073

West Galena Development, Inc.
Chains & Links, Inc.
c/o: Robert R. Roth, Esq.
Vincent, Roth & Toepfer, P.C.
122-1/2 N. Main Street
P.O. Box 334
Galena, Illinois 61036-0334

Vincent A. Varsek Trust
c/o: Philip A. Jackman, Esq.
309 N. Main Street
P.O. Box 226
Galena, Illinois 61036-0226

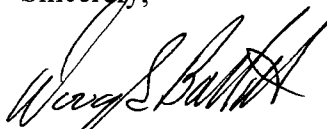
Re: Bautsch-Gray Mine Site, JoDaviess County, Illinois

Dear Sirs:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Thomas Turner, Associate Regional Counsel, at (312) 886-6613 or Len Zintak, On-Scene Coordinator, at (312) 886-4246.

Sincerely,


for Richard C. Karl, Director
Superfund Division

Enclosure

cc: Mr. Gary King
Illinois Environmental Protection Agency
Division of Land Pollution Control

bcc: Docket Analyst, ORC (C-14J)
Tom Turner, ORC (C-14J)
Len Zintak (SE-5J)
Carol Ropski, EESS (SE-5J)
John Maritote, EESS (SE-5J)
Fushi Cai, EEES (SE-5J)
Richard Hackley, PAAS (MF-10J)
Records Center (SMR-7J)
Denise Gawlinski, Public Affairs (P-19J) w/out attachments
Joseph Poetter, U.S. EPA, MS-002, 26 W. Martin Luther King Drive, Cincinnati, OH 45268
Michael T. Chezik, Department of Interior

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

BAUTSCH-GRAY MINE SITE
JO DAVIESS COUNTY, ILLINOIS

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. V-W- 10 -C-945

Respondents:

West Galena Development, Inc.
Chains & Links, Inc.
c/o: Robert R. Roth, Esq.
Vincent, Roth & Toepfer, P.C.
122-1/2 N. Main Street
P.O. Box 334
Galena, IL 61036-0334

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§9604, 9606(a), 9607 and 9622

Vincent A. Varsek Trust
c/o: Philip A. Jackman, Esq.
309 N. Main Street
P.O. Box 226
Galena, IL 61036-0226

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	3
II.	PARTIES BOUND.....	3
III.	DEFINITIONS.....	4
IV.	FINDINGS OF FACT	5
V.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
VI.	SETTLEMENT AGREEMENT AND ORDER.....	9
VII.	DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR	10
VIII.	WORK TO BE PERFORMED	11
IX.	SITE ACCESS	14
X.	ACCESS TO INFORMATION	15
XI.	RECORD RETENTION	16
XII.	COMPLIANCE WITH OTHER LAWS.....	16
XIII.	EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES.....	17
XIV.	AUTHORITY OF ON-SCENE COORDINATOR.....	17
XV.	PAYMENT OF RESPONSE COSTS.....	17
XVI.	DISPUTE RESOLUTION	20
XVII.	FORCE MAJEURE.....	20
XVIII.	STIPULATED PENALTIES	21
XIX.	COVENANT NOT TO SUE BY U.S. EPA	23
XX.	RESERVATIONS OF RIGHTS BY U.S. EPA	24
XXI.	COVENANT NOT TO SUE BY RESPONDENTS.....	25
XXII.	OTHER CLAIMS	26
XXIII.	CONTRIBUTION PROTECTION.....	26
XXIV.	INDEMNIFICATION	27
XXV.	MODIFICATIONS	27
XXVI.	NOTICE OF COMPLETION OF WORK.....	28
XXVII.	FINANCIAL ASSURANCE.....	28
XXVIII.	SEVERABILITY/INTEGRATION/ATTACHMENTS	29
XXIX.	EFFECTIVE DATE.....	29

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is entered into voluntarily by the United States Environmental Protection Agency (“U.S. EPA”) and Respondents. This Settlement Agreement provides for the performance of removal actions by Respondents and the reimbursement of certain response costs incurred by the United States at or in connection with the property located on South Blackjack Road in Jo Daviess County, Illinois, the “Bautsch-Gray Mine Site” or the “Site.”

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9604, 9606(a), 9607 and 9622, as amended (“CERCLA”). This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Illinois (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

4. U.S. EPA and Respondents recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings Of Fact) and V (Conclusions Of Law And Determinations) of this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

7. Respondents shall ensure that their contractors, subcontractors, and representatives

comply with this Settlement Agreement. Respondents shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9601, *et seq.*

b. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX (Effective Date).

c. "Future Response Costs" shall mean all costs, including direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date. Future Response Costs shall also include all costs, including direct and indirect costs, incurred prior to the Effective Date, but paid after that date and all costs, including direct and indirect costs, paid by the United States in connection with the Site between December 1, 2009 and the Effective Date.

d. "Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. §9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

f. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII (Severability/Integration/Attachments)). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

g. "Parties" shall mean U.S. EPA and Respondents.

h. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through November 30,

2009.

i. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

j. "Respondents" shall mean West Galena Development, Inc. , Chains & Links, Inc., and the Vincent A. Varsek Trust.

k. "Site" shall mean the Bautsch-Gray Superfund Site, encompassing approximately 100 acres, located at South Blackjack Road in Jo Daviess County, Illinois and depicted generally on the map attached as Attachment A.

l. "State" shall mean the State of Illinois.

m. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

n. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. §9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. §6903(27); and 4) any "hazardous material" under 415 Illinois Compiled Statutes ("ILCS") 5/3.215.

o. "Work" shall mean all activities Respondents are required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

9. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

a. The Site is located in Jo Daviess County approximately 4 miles south of Galena, Illinois adjacent to South Blackjack Road. The approximately 100-acre Site is composed of the surface-area remnants of a former zinc and lead mining operation. The Site is located in a rural agricultural and residential area and is bordered to the north, south, and east by residential properties and agricultural land, and to the west by Blackjack Road, further residential properties, and wooded areas. The Site is also within approximately 0.5 miles of Smallpox Creek, and approximately 1.5 miles of the shoreline of the Mississippi River.

b. The Bautsch-Gray Mine site originated as a lead and zinc mining operation sometime during the 1850s. Throughout the history of the mine, several small-scale companies have used the area for mining and milling operations. Larger scale companies also purchased mineral rights from different landowners for their own mining operations. Mining operations on the Site ceased in approximately 1975. Currently, four separate entities own the properties that comprise the Bautsch-

Gray Mine site. Respondents West Galena Development, Inc. and Chains and Links, Inc. have, since 1997, each respectively owned a ½ interest in at least an approximately 18.5-acre portion of the Site that is identified by the Jo Daviess County Assessor's office as #43-14-000-026-10. Respondent Vincent A. Varsek Trust has, since 1996, owned an approximately 32.85 acre portion of the Site that is identified by the Jo Daviess County Assessor's office as #43-14-000-068-30.

c. The zinc production operations involved the crushing and grinding of mined rock to standard sizes and then separating out the ore. This action left behind waste-piles of leftover rock called tailings. The elevation of the main waste-pile on the Bautsch-Gray site has been estimated to be approximately 50-90 feet above the surrounding ground surface. Since mining operations have ceased, the mine tailings have continued to erode and migrate toward the residential properties, wetlands, and fisheries near the Mississippi River. The tailings piles have no vegetative covering and, therefore, are subject to erosion, disturbance and displacement when weather or other natural or human activities affect them.

d. The Illinois Environmental Protection Agency (IEPA) conducted CERCLA site assessment activities in 2000 and 2001, respectively. During these assessments, it was determined that the waste-pile contained elevated levels of zinc, lead, arsenic, and other heavy metals. It was also determined that surrounding creeks and draining ditches were impacted from material that eroded from the large waste-pile on the Bautsch-Gray site. One residential groundwater well was determined to have been impacted by the waste-pile contaminants on-site.

e. During an August 2009 rain event, mine tailings were flushed from the main waste-pile on the Bautsch-Gray Mine site across Blackjack Road and onto residential properties. The residential property northwest of the site is located less than 200 feet from the mine tailings pile and future rain events could cause more tailings to be deposited on the property. IEPA and U.S. EPA are also concerned about present accessibility of the original tailings waste-pile, which has been observed to be accessed by parties using the material as free or low cost road fill and, thus, further spreading the release of contamination.

f. On August 18, 2009, two soil samples of Site tailings were collected by IEPA for laboratory analysis using Toxicity Characteristics Leaching Procedure (TCLP) methods for metals. Both samples exceeded the criteria of 5 milligrams per liter (mg/L) for TCLP lead.

g. On August 24, 2009, the IEPA conducted X-Ray Fluorescence (XRF) screening of site soil/tailings material from the waste-pile, adjacent road ditches, and the nearby residential areas. The XRF screening results of 36 samples ranged from 69 to 2,160 parts per million (ppm) lead with majority of results being greater than the U.S. EPA Soil Screening level of 400 ppm lead.

h. The August 2009 rain event resulted in approximately 12 inches of mine tailings washing onto Blackjack Road. The Jo Daviess County Highway Department responded with crews to move the material from the road back into the site in order to clear the road and make it passable. According to the Highway Department, this has been a frequent problem during the rainy seasons in previous years. Vehicles that travel on Blackjack Road create dust that originates from mine tailings

waste. The airborne material may present a health hazard to local residents and highway workers. On September 9, 2009 IEPA requested U.S. EPA assistance.

i. U.S. EPA conducted a Site Assessment in October 2009. In a November 2009 preliminary Site Assessment findings memorandum (Memo), U.S. EPA determined that the residential property at 746 Blackjack Road, Jo Daviess County, Illinois had been directly affected by the release of tailings from the Site. The November 2009 Memo identified lead contamination in the residential property well water at 27 Micrograms-per-Liter (ug/L), and some surface soil lead contamination above 1,200 ppm.

j. In November 2009, U.S. EPA identified and notified (verbally and by letter) the above referenced Respondents as Site owners. On November 30, 2009, and January 13 and 15, 2010, the Respondents indicated to U.S. EPA that they would consider performing a removal action.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

a. The Bautsch-Gray Mine Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

c. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondents West Galena Development, Inc., Chains & Links, Inc, and Vincent A. Varsek Trust are the “owners” of portions of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

ii. Respondents West Galena Development, Inc., Chains & Links, Inc, and Vincent A. Varsek Trust are the “owners” of portions of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2).

iii. The conditions at the residential property at 746 Blackjack Road, described in the Findings of Fact above, constitute an actual or threatened “release” of a hazardous substance from the facility into the “environment” as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§9601(22) and 9601(8).

e. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (“NCP”), 40 CFR §300.415(b)(2). These factors include, but are not limited to, the following:

i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;

Analysis of soil samples collected in surface soils (0 to 4 inches) confirmed the presence of high concentrations of lead above 1,200 ppm, exceeding the U.S. EPA Regional Screening Levels for Contaminants of Concern at Superfund Sites and the U.S. EPA Soil Screening Levels criteria of 400 ppm; exceeding the Superfund Lead-Contaminated Residential Sites Handbook Tier 1 properties criteria of 1,200 ppm; and exceeding the Superfund Adult Lead Methodology screening value for soil lead at commercial/industrial Sites criteria of 800 ppm. Lead is a “hazardous substance” as defined by Section 101(14) of CERCLA. However, of primary concern is the drinking water well on the residential property at 746 Blackjack Road, Galena, Illinois. The presence of lead from the Site tailings pile has contaminated the water well supply. The concentration in the residential well is 27 ug/L. The acceptable limit is 15 ug/L. Also, the residential yard at the 746 Blackjack Road address has soil with high levels of lead contamination from the Site tailings pile. Such yard soil has high accessibility to sensitive populations including children and pregnant women. Adults and children may be exposed to high levels of lead from normal foot traffic, yard work, and play.

The effects of lead exposure are more severe for young children and the developing fetus through exposure to a pregnant woman. The harmful effects of lead include premature births, lower birth weight, decreased mental ability in infants, learning difficulties, and reduced growth in young children. The main target for lead toxicity is the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance in some tests that measure functions of the nervous system. It may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. High-level exposure in men can damage the organs responsible for sperm production. Reference: ATSDR. August 2007. Division of Toxicology and Environmental Medicine ToxFAQs. Agency for Toxic Substances and Disease Registry, Division of Toxicology. Atlanta, GA. U.S. Department of Health and Human Services, Public Health Service.

ii) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

Analysis of soil samples collected in surface soils (0 to 4 inches) from the residential property at 746 Blackjack Road confirmed the presence of high levels of lead up to 1,340 ppm, exceeding the U.S. EPA Regional Screening Levels for Contaminants of Concern at Superfund Sites and the U.S. EPA Soil Screening Levels criteria of 400 ppm; exceeding the Superfund Lead-Contaminated Residential Sites Handbook Tier 1 properties criteria of 1,200 ppm. Sensitive populations including children under 7 years old and pregnant women may become exposed through normal foot traffic, yard work, or play. Also the presence of the contaminant at or near the surface allows for the potential for migration of the contaminant from residential yards via wind, rain or manual dispersion.

iii) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

This factor is present due to the existence of high levels of lead in surface soils sampled (0 to 4 inches), including those at the residential property at 746 Blackjack Road. During dry conditions, winds could cause dust particles to further migrate both on and off Site. During precipitation events, surface water runoff is causing significant runoff of contamination from the Site tailings pile to the residential properties and further downstream to the Mississippi River. Due to the previously mentioned potential for adverse weather conditions causing release or threat of release of the Site tailings, and the possibility of high concentrations of lead in residential areas above health standards, as well as direct contact and inhalation threats to public health, welfare or the environment should continued exposure persist, the criteria for a removal action are met.

iv) The availability of other appropriate federal or state response mechanisms to respond to the release;

On September 9, 2009, IEPA requested the assistance of the U.S. EPA Emergency Response Branch in assessing and mitigating potential hazards associated with this Site. The State of Illinois (IEPA) has indicated they do not have the resources to conduct the required time-critical removal actions. IEPA is planning to propose the site for inclusion on the NPL.

f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

11. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and

the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

12. Respondents shall retain one or more contractors to perform the Work and shall notify U.S. EPA of the name(s) and qualifications of such contractor(s) within 5 business days of the Effective Date. Respondents shall also notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If U.S. EPA disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval. The contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared consistent with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by U.S. EPA.

13. Within 5 business days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement Agreement and shall submit to U.S. EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by Respondents' Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by all Respondents.

14. U.S. EPA has designated Len Zintak of the Emergency Response Branch #2, Region 5, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondents shall direct all submissions required by this Settlement Agreement to the OSC at 77 West Jackson Blvd., SE-5J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

15. U.S. EPA and Respondents shall have the right, subject to Paragraphs 12 and 13, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the

Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but it shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

16. Respondents shall perform, at a minimum, the following removal activities:

a. Develop and implement a Site Security Plan to restrict access to the mine tailings pile on-Site, and cease any sale of/arrangement/involvement with the removal of tailings from the Site;

b. With the property owner's permission, install temporary fencing and appropriate warning signage to restrict access to lead contaminated surface soil areas on the residential property at 746 S. Blackjack Road.

c. With the property owner's permission, install and maintain a whole house water filter on the house at 746 S. Blackjack Road. The filtration system must reduce lead contamination levels in the well water to below 15 ug/L (micrograms per liter).

17. a. Within 10 business days after the Effective Date, Respondents shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 16 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S. EPA requires revisions, Respondents shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of the required revisions. Respondents shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondents shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondents shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 17(b).

18. Health and Safety Plan. Within 10 business days after the Effective Date, Respondents shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include

contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action.

19. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondents shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondents shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondents shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by U.S. EPA, Respondents shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondents shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by U.S. EPA, Respondents shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondents shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow Respondents to take split or duplicate samples of any samples it takes as part of its oversight of Respondents' implementation of the Work.

20. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by U.S. EPA, Respondents shall submit a proposal for post-removal site control consistent with Section 300.415(I) of the NCP and OSWER Directive No. 9360.2-02. Upon U.S. EPA approval, Respondents shall implement such controls and shall provide U.S. EPA with documentation of all post-removal site control arrangements.

21. Reporting.

a. Respondents shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of

U.S. EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondents shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondents shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

22. Final Report. Within 60 calendar days after completion of all Work required by Section VIII (Work To Be Performed) of this Settlement Agreement, Respondents shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with the guidance set forth in "Superfund Removal Procedures: Removal Response Reporting " POLREPS and OSC Reports" (OSWER Directive No. 9360.3-03, June 1, 1994). The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

23. Off-Site Shipments.

a. Respondents shall, prior to any off-Site shipment of Waste Material from the Site to an

out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondents shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the removal action. Respondents shall provide the information required by Paragraph 23(a) and 23(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondents shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. §9621(d)(3), and 40 C.F.R. §300.440. Respondents shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

24. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondents shall, commencing on the Effective Date, provide U.S. EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

25. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondents shall immediately notify U.S. EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access. U.S. EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as U.S. EPA deems appropriate. Respondents shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining

such access, in accordance with the procedures in Section XV (Payment of Response Costs).

26. Notwithstanding any provision of this Settlement Agreement, U.S. EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

27. Respondents shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

28. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7), and 40 C.F.R. §2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents.

29. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondents assert such a privilege in lieu of providing documents, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

31. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 6 years after Respondents' receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondents shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

32. At the conclusion of this document retention period, Respondents shall notify U.S. EPA at least 60 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondents shall deliver any such records or documents to U.S. EPA. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

33. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site and that it has fully complied and will fully comply with any and all U.S. EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

XII. COMPLIANCE WITH OTHER LAWS

34. Respondents shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. §6921(e), and 40 C.F.R. §§300.400(e) and 300.415(j).

In accordance with 40 C.F.R. §300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements

("ARARs") under federal environmental or state environmental or facility siting laws. Respondents shall identify ARARs in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

35. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response Branch (#1 or #2), Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondents shall reimburse U.S. EPA all costs of the response action consistent with the NCP pursuant to Section XV (Payment of Response Costs).

36. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the OSC at (312) 353-2318 and the National Response Center at (800) 424-8802. Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

37. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

38. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondents shall pay to U.S. EPA \$32,931.75 for payment of Past Response Costs. Payment shall be made to U.S. EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures that U.S. EPA Region 5 will provide Respondents, and shall be accompanied by a statement identifying the

name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5TS and, if any, the U.S. EPA docket number for this action. Respondents shall: 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the U.S. EPA Account #68010727 on the form; 3) include "D 68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number B5TS.

When the Past Response Costs identified in the above Paragraph are less than \$10,000, payment may, in lieu of the described EFT method, be made by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5TS, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that such payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Thomas Turner, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 38(a) shall be deposited in the Bautsch-Gray Mine Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

39. Payments for Future Response Costs.

a. Respondents shall pay U.S. EPA all Future Response Costs consistent with the NCP. On a periodic basis, U.S. EPA will send Respondents a bill requiring payment that consists of an Itemized Cost Summary. Respondents shall make all payments within 30 calendar days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 41 of this Settlement Agreement according to the following procedures

i. If the payment amount demanded in the bill is for \$10,000 or greater, payment shall be made to U.S. EPA by EFT in accordance with current Electronic Funds Transfer ("EFT") procedures to be provided to Respondents by U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party(ies)

making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5TS, and, if any, the U.S. EPA docket number for this action. Respondents shall: 1) complete Respondents' required bank form; 2) include Federal Reserve Bank of New York, ABA #021030004 on the bank form; 3) include the U.S. EPA Account #68010727 on the form; 4) include "D 68010727 Environmental Protection Agency" in Field Tag 4200 of the Fedwire message; and 5) include the statement identifying the name and address of the party(ies) making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number B5TS.

ii. If the amount demanded in the bill is \$10,000 or less, the Settling Respondents may, in lieu of the procedures in subparagraph 39(a)(i), make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund", referencing the name and address of the party(ies) making the payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number B5TS, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondents shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Thomas Turner, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590.

c. The total amount to be paid by Respondents pursuant to Paragraph 39(a) shall be deposited in the Bausch-Gray Mine Special Account within the U.S. EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

40. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

41. Respondents may dispute all or part of a bill for Future Response Costs submitted under this Settlement Agreement, only if Respondents allege that U.S. EPA has made an

accounting error, or if Respondents allege that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents shall pay the full amount of the uncontested costs to U.S. EPA as specified in Paragraph 39 on or before the due date. Within the same time period, Respondents shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondents shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 39(b) above. Respondents shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 20 calendar days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

42. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

43. If Respondents object to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, they shall notify U.S. EPA in writing of their objection(s) within 10 calendar days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting Respondents' position, and all supporting documentation on which such party relies. U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 calendar days after receipt of the written notice of dispute. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. The time periods for exchange of written documents relating to disputes over billings for response costs may be extended at the sole discretion of U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement.

44. Respondents' obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

45. Respondents agree to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a

force majeure. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

46. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondents shall notify U.S. EPA orally within 24 hours of when Respondents first knew that the event might cause a delay. Within 7 calendar days thereafter, Respondents shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall be grounds for U.S. EPA to deny Respondents an extension of time for performance. Respondents shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

47. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondents in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

48. Respondents shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 49 and 50 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondents shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

49. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 49(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1,000	31st day and beyond

b. Compliance Milestones

Submission of Work Plan	10 business days after Effective Date
Submission of Health/Safety Plan	10 business days after Effective Date
Submission of Site Security Plan	15 business days after Effective Date

50. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 21-23, 27:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$250	31st day and beyond

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondents of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 41 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

52. Following U.S. EPA's determination that Respondents have failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondents written notification of the failure and describe the noncompliance. U.S. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondents of a violation.

53. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondents' receipt from U.S. EPA of a demand for payment of the penalties, unless

Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to U.S. EPA under this Section shall be paid by certified or cashier's check(s) made payable to "U.S. EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000, shall indicate that the payment is for stipulated penalties, and shall reference the U.S. EPA Site/Spill ID Number B5TS, the U.S. EPA Docket Number, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Paragraph 39(b).

54. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Settlement Agreement.

55. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 20 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

56. If Respondents fail to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 53. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Should Respondents violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. §9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

57. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by U.S. EPA of the Past Response Costs due under Section XV (Payment of Response Costs) of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV

(Payment of Response Costs) and XVIII (Stipulated Penalties) of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

58. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

59. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by U.S. EPA) above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

60. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. §2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607 and 9613, relating to the Site.

Except as provided in Paragraph 62 (waivers of claims, below), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 59 (b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

61. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. §300.700(d).

62. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

- a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials.

- b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if U.S. EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such

Respondent.

XXII. OTHER CLAIMS

63. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

64. Except as expressly provided in Section XXI (Covenant Not to Sue by Respondents), Paragraph 62 waivers of claims and Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§9606 and 9607.

65. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

XXIII. CONTRIBUTION PROTECTION

66. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work , Past Response Costs, and Future Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42. U.S.C. §9613(f)(3)(B), pursuant to which the Respondents have, as of the Effective Date, resolved their liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Except as provided in Section XXI (Covenant Not To Sue By Respondents), Paragraph 62, of this Settlement Agreement, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Section 113(f)(2) and (3), 42 U.S.C. §9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action, and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2).

XXIV. INDEMNIFICATION

67. Respondents shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondents agree to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement Agreement. Neither Respondents nor any such contractor shall be considered an agent of the United States. The Federal Tort Claims Act (28 U.S.C. §§2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

68. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

69. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

70. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

71. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation

until receiving oral or written approval from the OSC pursuant to Paragraph 70.

72. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

73. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, post-removal site controls, payment of Future Response Costs, and record retention, U.S. EPA will provide written notice to Respondents. If U.S. EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondents to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

74. Within 30 days of the Effective Date, Respondents shall establish and maintain financial security in the amount of \$25,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; or
- e. A demonstration that one or more of the Respondents satisfy the requirements of 40 C.F.R. Part 264.143(f).

75. If Respondents seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 74(a) of this Section, Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondents seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 74(d) or (e) of this Section, they shall resubmit sworn

statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Respondents shall, within 30 days of receipt of notice of U.S. EPA's determination, obtain and present to U.S. EPA for approval one of the other forms of financial assurance listed in Paragraph 74 of this Section. Respondents' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement.

76. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 74 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to U.S. EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by U.S. EPA. In the event of a dispute, Respondents may reduce the amount of the security in accordance with the written decision resolving the dispute.

77. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVIII. SEVERABILITY/INTEGRATION/ATTACHMENTS

78. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondents have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

79. This Settlement Agreement and its attachments constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following attachment is incorporated into this Settlement Agreement: Map of Site – Attachment A

XXIX. EFFECTIVE DATE

80. This Settlement Agreement shall be effective upon receipt by Respondents of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5. The undersigned representatives of Respondents each certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party they represent to this document.

IN THE MATTER OF: Bautsch-Gray Mine Site, Jo Daviess County, Illinois

Agreed this 5th day of February 2010.

For Respondent West Galena Development, Inc.

By

Title Tom Jean Wiener Knautz
President

For Respondent Chains & Links, Inc.

By

Title Thom Wren
Pres

For Respondent Vincent A. Varsek Trust ee

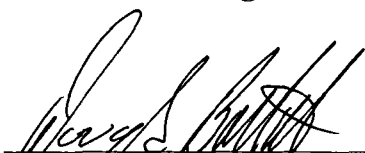
By

Title Joan Pecora

IN THE MATTER OF: Bautsch-Gray Mine Site, Jo Daviess County, Illinois

It is so ORDERED and Agreed this 3RD day of MARCH, 2010.

BY:



for

Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5

BAUSCH-GRAY MINE SUPERFUND SITE



ATTACHMENT A

**REMOVAL PROGRAM
FINAL 106 CONSGNT ORDER
ROUTING SLIP**

(December 2007 Version)

_____ BAUTSCH-GRAY MINE SITE _____
SITE NAME)

(Final Version, already signed by the PRPs, being processed for U.S. EPA signature.
Use if PRPs have signed with substantivu changes.)

Please sign the Yellow and check your name off this page.
Then pass the document on to the next name.

	<u>MAIL</u>	<u>CODE</u>
<u>NAME</u>		
1. ERB ENFORCEMENT SPECIALIST	Carol Ropski <i>CA 2-17-10</i>	SE-5J
2. ERB ON-SCENE COORDINATOR	Len Zintak <i>LS 2-17-10</i>	SE-5J
3. ERB SECTION CHIEF I/II/III	Tom Crosetto <i>TC 2/18/10 w/ chgs</i>	SE-5J <i>change made 2/24/10</i>
4. EESS SECRETARY	Akimi Cheng	SE-5J
5. ORC STAFF ATTORNEY	Tom Turner <i>TT 2/24/10</i>	C-14J
6. ORC SECTION CHIEF	Connie Puchalski <i>CP 2/22/10</i>	C-14J
7. EESS SECRETARY	Akimi Cheng	SE-5J
8. EESS SECTION CHIEF	Bill Messenger <i>BM 2-22-10</i>	SE-5J
9. ERB BRANCH SECRETARY	Cynthia Beck	SE-5J
10. Acting ERB #2 CHIEF	Charlie Gebien <i>CG 2/23/10</i>	SE-5J
11. ERB SECRETARY	Cynthia Beck	SE-5J
12. ACTING DOCKET CLERK		S-6J
13. ENFORCEMENT COORDINATOR	Lawrence Schmitt <i>LS 3/2/10</i>	S-6J
14. SF DIVISION DIRECTOR FOR SIGNATURE	Rick Karl <i>RK 2/8/10</i>	S-6J
15. ERB SECRETARY	Cynthia Beck	SE-5J
16. EESS SECRETARY FOR	Akimi Cheng	SE-5J

MAILING TO PRP'S AND
DISTRIBUTION OF BCC LIST
DATE MAILED TO PRPs: MAR 03 2010

CONCURRENCE REQUEST									
EMERGENCY RESPONSE BRANCH, SFD									
ES C4	OSC 2/18/10 with comment	RS CHIEF	EESS CHIEF	ORC 2/18/10	ORC CHIEF 2/18/10	ERB CHIEF	ENF COORD	SFD DIRECTOR 3/3/10	RA

2-17 102-1710
2/18/10 with comment
2/18/10 with comment

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

West Galena Development, Inc.
Chains & Links, Inc.
c/o: Robert R. Roth, Esq.
Vincent, Roth & Toepfer, P.C.
122-1/2 N. Main Street
P.O. Box 334
Galena, IL 61036-0334

Vincent A. Varsek Trust
c/o: Philip A. Jackman, Esq.
309 N. Main Street
P.O. Box 226
Galena, IL 61036-0226

Re: Bautsch-Gray Mine Site
JoDaviess County, Illinois

Dear Sirs:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this Site pursuant to Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§9606 and 9622. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Thomas Turner, Associate Regional Counsel, at (312) 886-6613 or Len Zintak, On-Scene Coordinator, at (312) 886-2432.

Sincerely yours,

Richard C. Karl, Director
Superfund Division

Enclosure